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12. K. 6

I have a personal regard
for the author; & I think, that
the opinion he maintains is
to the general point is the right
one; & I also think, that
the style is strong & perspicuous.
But I strongly disapprove of
some parts of the letter, and
even in respect of the personal
and in respect of
LETTER
the inflammatory tendency of
the language &c.

TO THE

RIGHT HONOURABLE

WILLIAM PITT

LETTER

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TO THE

RIGHT HONORABLE

WILLIAM PITT

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LETTER

TO THE

RIGHT HONOURABLE

WILLIAM PITT,

K.

OF THE

DOCTRINES

BRITANNICA

LAI~~D DOWN BY HIM~~

RESPECTING THE

INTRODUCTION of FOREIGN TROOPS.

L O N D O N :

PRINTED FOR G. G. AND J. ROBINSON, PATERNOSTER ROW.

MDCXCIV.

LETTER

TO THE

HIGH HONOURABLE

WILLIAM PITT



RESPECTING THE

INTRODUCTION OF FOREIGN TROOPS

L O N D O N

PRINTED FOR G. C. AND J. ROBINSON, SATURDAY, 1801.

MDCCCXI

L E T T E R, &c.

S I R,

AT a period like the present, when the most alarming attempts are made to augment the prerogatives of the crown, and to diminish the rights and liberties of the people, it becomes the absolute duty of every citizen to give his assistance towards stemming the torrent which is intended to overwhelm us.

You, Sir, have daringly asserted, that it is the undoubted prerogative of the king to introduce bodies of alien soldiers in time

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of

of war into this kingdom upon his own mere authority, without the previous consent of parliament. When you made an assertion so repugnant to the spirit of our constitution, and, I will venture to affirm, so contrary not only to the spirit of our laws, but even to the letter of our statute book, you would have acted a part more becoming and less arrogant had you condescended to attempt at producing some proofs in support of your position: but, knowing that where you then stood your word was law, you concluded that you might impose with equal success upon the rest of the country. That expectation remains yet to be realized. I trust that there is yet virtue enough left amongst us to reject the wicked doctrine you have thought proper to adopt. Though you may be satisfied with a bare assertion to which the reputation of your name may add all the weight of substantial proof, it is an example which

which I feel myself neither able nor willing to follow ; and since you have neglected to bring either fact or argument to prove that your position is law, I will take upon myself to produce both, so as to prove that it is not.

If, Sir, your position is law, it is so either by the statute or the common law. I affirm that there is no statute to be found, giving such a power—I affirm that there is no immemorial usage giving such a power. If any such statute or any such usage exists, it is your business to produce them. The onus probandi, the task of proving rests with you ; and if you are silent, or if you give an equivocal answer, or any answer short of proof, you will stand convicted before your countrymen of maintaining a position which you cannot constitutionally or legally defend, for the express purpose of increasing the

royal power at the expence of some of the
rightful privileges of the people.

A member who once possessed sufficient
consequence to be the representative of the
first city in this country has made an effort
to prove this position lawful or granted by
law, because, as he conceives, inconvenience
might arise in some cases if the king did not
possess such a power. To this I answer: first,
The common law does not by any means al-
low the exercise of prerogative upon any such
ground. There are many powers which
are not entrusted to the king, yet the exer-
cise of which in particular emergencies
might be beneficial to the state. Thus, the
levying money without the consent of par-
liament might in times of invasion be
beneficially exercised by the crown: in the
same circumstances commitment per ipsum
mandatum regis, upon which no bail should
be

be allowed, is a power which might be beneficially exercised : yet these powers are not entrusted to the king. The power of employing alien officers on the staff under Lord Moira might be advantageous, because, as suggested by Mr. Dundas, they might be the most capable : yet the law does not authorize such employment ; on the contrary, it is expressly forbidden. To argue therefore upon such a ground is absurd, since it follows, that from the preceding instances there are cases in which this power is not lodged in the king, although circumstances may exist under which it might be *beneficially* exercised. But secondly, if the argument of convenience has any weight, it must make directly in favour of a contrary position. We must submit to particular inconveniences to secure general advantages. We must submit to those *accidental inconveniences* which may arise from the incapacity

incapacity of the crown to introduce foreign troops, in order to secure to ourselves the general advantages of not seeing *our lives, our liberties, and our properties* at the disposal of foreign mercenaries.

“To prevent the executive power “from being able to oppress,” says the Baron Montesquieu, “it is requisite that “the armies with which it is entrusted “should consist of the people, and have the “same spirit with the people; as was the “case at Rome till Marius new modelled “the legions by enlisting the rabble of “Italy, and laid the foundation of all the “military tyranny that ensued.”—So is it now in England, and so will it continue, until the spirit of liberty has so evaporated from the souls of her inhabitants as to submit without resistance to the usurpations of the royal prerogative, dictated by ministerial

sterial arrogance, and supported by parliamentary fervility; and until she shall view without emotion her own troops fighting the cause of despotism abroad, while her own shores are defended from a threatening invasion by the illegal introduction of foreigners *. “ Nothing then,” says the learned Blackstone, “ according to these principles, ought to be more guarded against in a free state than making the military power, when such a one is necessary to be kept on foot, a body too distinct from the people. *Like ours it should be wholly composed of natural subjects*; it ought only to be enlisted for a short and limited time; the soldiers also should live intermixed with the people. No separate camps, no

* It is worthy of observation, that at the very period when these foreign troops are suffered to continue in England, a body of British soldiers are drafted for service in Flanders.

“ barracks,

" barracks, no inland fortresses should be
 " allowed. And perhaps it might be still
 " better, if, by dismissing a stated number,
 " and enlisting others at every renewal of
 " their term, a circulation should be kept up
 " between the army and the people, and the
 " citizen and the soldier be more intimately
 " connected together." Such is the bearing
 of the argument of convenience, upon the
 authority of Montesquieu and Blackstone ;
 and, until the worthy alderman can produce
 something equally weighty in the opposite
 scale, I would advise him either to alter his
 opinion or to keep it to himself.

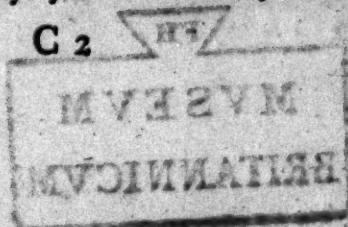
The history of England recognizes but
 three species of military force : 1st, the mili-
 tary tenants ; 2dly, the militia ; 3dly, the
 standing army. The military tenants were
 those who under the feudal system, during
 that period in which it was rigorously ex-
 ercised,

exercised, composed the whole military force of the kingdom: but in proportion as the feudal spirit declined, the feudal provisions and regulations declined also; and the military service, being gradually commuted into the payment of small fines, became insufficient for the purposes for which it was originally intended. Upon the ruins of these tenures the militia grew into its present shape. The fundamental restrictions by which it is made the instrument of defence instead of an engine of oppression, were all derived from the very principles by which the military tenants were assembled, and by which when assembled their operations were directed. In the reign of Charles II. the remnants of the feudal military force were abolished, and at the same time those regulations were recognized as law by which the militia of the kingdom are at this day secured from the arbitrary oppression of

the crown, and the probability greatly weakened of themselves becoming the instruments of tyranny over others. " This is," as Blackstone emphatically files it, " the constitutional security which our laws have provided for the publick peace and for protecting the realm against foreign or domestic violence." The third and last branch of the military force recognized in our history is the standing army. This practice grew out of the necessity in time of war of maintaining on foot a larger body of troops than that which formed the national militia, which practice has by the subsequent policy of Europe, and the *concurrence of our legislature*, been extended in some degree to times even of profound peace.

Now with respect to these three descriptions, the law has always provided the means of enforcing military discipline over each

each of them, when drawn into actual service. It is true, that when the militia are drawn out only for the purpose of training and of exercise during times of peace, the law as it is administered abates much of that rigour which is exercised towards the forces of the standing army; but when they are embodied for the purposes of actual defence, they are then put upon the same footing with the other forces of the kingdom, and are included within all the rigorous provisions of the mutiny act. But this act, which is the only act generally giving the power of enforcing military discipline, has no reference but to a specific body of men; it relates only to the standing army, and such other land forces as are composed of British foldiers and embodied for the service of the current year. It is itself only an annual act, which by expiring at the close of every year reserves, or rather



is supposed to reserve to the people, through their representatives, a complete controul over the whole military force of the kingdom. If the mutiny act is suffered to expire, the army is instantly disbanded : that is, it instantly becomes a body of simple citizens freed from all the controul of military discipline, and in common with its fellow citizens subject only to the ordinary law of the land. Now as this act is the only one for enforcing military discipline, it follows that all persons who do not come within the particular description contained in it are *not* liable to the provisions and punishments which it enacts ; and as it has a reference only to British soldiers, no alien can be considered as within the scope of it : for it is a principle in our law, that no penal statute is to be extended in its effects by implication beyond what is comprised in the strict letter of it. But since the



the law has not entrusted the king with the power of enforcing military discipline over alien soldiers, the natural inference to be drawn is, that the law has not authorized him to introduce them as soldiers into the kingdom; for it is also a maxim of law, that, *Quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa esse non potest.* Supposing therefore the Hessian troops to be landed upon this island or any spot within the realm of England, I maintain that they would not by the law of England be subject to military discipline, so long as they continue in this kingdom; and if they should desert, or commit any other military offence, they would not be liable to be punished by their officers, who, if they should attempt to inflict any corporal punishment, would be themselves liable to an indictment. And further, when these troops have once set foot on British territories, I

confess

confess that I am ignorant of any power which has authority to send them against their will out of it; for I presume that it will not be argued that the alien bill, which had a reference in express terms only to suspected persons, was intended to include at one period in its expulsive operation, those very men whose entry was recommended but a short time before by the assumed authority of the crown. If then the law of England does not subject these troops to military discipline, I should be glad to know by what law they can be brought within its reach: for as our constitution acknowledges the existence of no law but its own within these realms, it can scarcely be pretended that the troops can be subject to the military law of Hesse. The maintenance of such a doctrine would be a new epoch in the history of legislation, and I cannot forbear marking one curious dilemma which

such

such an invention would produce. Supposing the military law of Hesse to be allowed, under the pressure of particular circumstances, to be the rule for the conduct of these troops while in England, it must be exercised either in the name of the King of England or of the Landgrave of Hesse. If it is exercised in the name of the King of England, it follows that the King of England directs the conduct of a body of men, living under the protection of the regular laws of England, by laws which he has himself introduced without the consent of his parliament. If it is exercised in the name of the Landgrave, it then follows that a foreign prince is admitted to participate in the sovereign power of England, and to exercise that power in a manner not permitted to the King himself, viz. without the consent of parliament, and contrary to the declaration which every man is compelled to make

make when he takes the oath of allegiance, viz. that no foreign prince or potentate hath or ought to have any power, jurisdiction, or pre-eminence within this realm. Waiving then for the present moment the mere point of introduction, it appears perfectly clear that all foreign soldiers, from the instant that they land within the realm of England, are either no longer soldiers, or if they continue after such landing to act as soldiers, they do so without the sanction of any law, and in direct defiance of the spirit of our constitution.

It now only remains for me to shew, that the measure of introducing bodies of aliens into these kingdoms is not only not sanctioned by law, and in direct defiance of the spirit of our constitution, but that it is also in direct defiance of an existing statute. I confess that I was more surprised at the

line

line of argument taken by those who combated your position, than I was at the daring and unprincipled character of the position itself: and I am now still at a loss to conceive how the particular clause in the bill of rights, principally relied on by them, is at all applicable to the present question. It should be remembered, that the bill of rights professes only to enumerate and to remedy grievances which had existed previously to that act, and that one of the grievances complained of was the maintenance of a standing army in time of peace without the consent of parliament. This statute having been made for a particular purpose, it does not appear to me by what mode of argument, either by analogy or otherwise, the present position is to be brought within the scope of it; and still less can I subscribe to the doctrine which was held by one whose splendid talents give, I

might in some cases say, a dangerous authority to his opinions; viz. That the words "*in time of peace*" were nugatory, and could "not mean to exclude time of war." I cannot conceive it to be an allowable principle in our system of jurisprudence, to consider as nugatory any words in an act of parliament, which are capable of any precise meaning; much less words which not only admit a precise meaning, but which will in fact admit no other. Notwithstanding all the respect which I entertain for Mr. Fox and his opinions, I cannot help thinking, that if the security of the subject against the exercise of so dangerous a prerogative as that of introducing at the mere will of the crown any number of foreign troops, depended only upon any barriers which may be set up against such a power in the bill of rights, the foundation of their security is feeble and uncertain. The

act of settlement of the 12 and 13 W. 3. c. 21 is the statute which conveys to my mind, in the clearest manner, a strong conviction that no such power can now exist, and that the exercise of it is absolutely illegal. That act declares, that no alien, though naturalised, shall be capable of holding *any office*, or post of trust, civil or military. Now, surely, if by this act every individual alien is excluded, a fortiori it must comprehend within its meaning a body of aliens. Will any man tell me, that a body of foreign troops, commanded by foreign officers, possessed of artillery, arms and accoutrements, when introduced into a foreign country, do not hold *any office, or post of trust*, in that country? And if they do hold such office, will he venture to assert, that they do not come within the strict letter of the act of settlement? The man, whoever he may be, who presuming upon the authority of an

high situation, and trusting for support to the corrupt subserviency of parliamentary creatures, shall venture to maintain and act upon such a position, will in all probability doom his country to the desolation of a civil war. If, Sir, you do not mean to be that man; if you are really unwilling to purchase this prerogative at such a price—stop, yet ere the sleeping lion is roused. The people of England have tamely suffered you to depart with impunity from every public principle, with which you first drew their attention, and engaged their hearts. They have tamely seen you repeatedly engage in measures you were well known to disapprove; they have tamely suffered that prerogative against which when it answered your purpose no man exclaimed more loudly than yourself, to steal under your auspices to the most unconstitutional height. No man has ever yet extended by corruption

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the civil power of the Crown, to an extent so truly alarming as you have. You have scattered your bribes till you have almost annihilated all opposition; and now, as the reward of your profusion, you require an acknowledgment, that the sword too is without controul in the hand of the sovereign. As I cannot conceive that the people of England will ever finally suffer such an acquisition of arbitrary power to remain in the Crown, without struggling to extinguish it, I earnestly hope that their opposition will be immediate, because *now* a slight exertion may suffice to crush the presumptuous attempt; whereas, if they wait until you have established the prerogative by the assistance of your parliament, and until you have actually grasped the sword, the contest must then be bloody indeed, and its issue perhaps alike fatal to the injured as to the oppressor.

There

There is only one point more which is at all necessary to my argument, namely, the different situations and motives of the parties at the time when the Bill of Rights and when the Act of Settlement were passed. The Bill of Rights was the bill which passed immediately upon the revolution being completed. The parties to it were the people and their new sovereigns. Mary, a native of England, and William, but little elevated in rank or influence beyond many subjects in this country; himself a subject in Holland, and the petty prince only of some petty districts in Germany. Thus situate the people saw nothing more alarming in his elevation to the throne than would arise in the case of his being actually one of themselves. They saw no inconveniences likely to exist from *foreign connections*, or from any other cause which bore any relation to him; and therefore they contented themselves

themselves with applying remedies to those
 grievances which had actually given rise to
 the revolution, and finally brought about the
 vacancy of the throne. But when the death
 of Queen Mary without heritable issue, and
 that also of the Duke of Gloucester, the
 only surviving issue of the Princess Anne of
 Denmark, made a further limitation in the
 succession to the crown necessary, and when
 that succession was accordingly limited to the
 Princess Sophia of Hanover and her issue,
 other considerations arose, other inconven-
 iences were foreseen, and other remedies
 were prepared. It was then "deemed re-
 "quisite and necessary that some further
 "provision be made for securing our reli-
 "gion, laws, and liberties," in case this li-
 mitation should ever take effect. It was
 then that the possible inconveniences of fo-
 reign connections were foreseen; it was
 then

then the time for providing against those dangers which might result from the introduction of an alien family, of a sovereign in another part of Europe, of a prince possessed of independant armies and revenues distinct from the armies and revenues of England. It was then, and with a view to these contingencies, that the Act of Settlement expressly declared—"That after the
 "said limitation shall take effect as afore-
 "said, no person born out of the kingdoms
 "of England, Scotland, or Ireland, or the
 "dominions thereunto belonging (although
 "he be naturalized or made a denizen, ex-
 "cept such as are born of English parents),
 "shall be capable to be of the privy council,
 "or a member of either house of parlia-
 "ment, or to enjoy *any office* or place of
 "trust either civil or military, or to have
 "any grant of lands, tenements, or heredi-
 "taments

"taments from the crown, to himself or to
 "any others in trust for him."

Is it then possible that any person, who is not actuated by motives of private interest or ambition, who is ready to admit and to support at any hazard the just prerogatives of the crown, but who is equally anxious to maintain the rights and privileges of the people, can assert or believe that it is the undoubted prerogative of the crown to introduce foreign troops into this country without the consent of parliament? Can any person possessed of common sense, taking this view of the subject and reading the above clause in the Act of Settlement, maintain that it was the intention of that act to exclude aliens individually, but to admit them in a body; or can he support the idea of the legality of their admission in that

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manner,

manner, without necessarily involving this contradiction between the letter and the spirit of this act?

I cannot but lament that ill-timed prudence, that pusillanimity which has left this great question in suspense, and leaves an opening for the future exercise of this usurped prerogative, by suffering the precedent to remain without condemnation. It is a question which in its immediate effects, I will venture to assert, more completely involves the fate of our laws, our liberties, our properties, and our lives, than any question which has been agitated since the year 1776, when the very same point was discussed, and its illegality most solemnly affirmed, by one of the first constitutional lawyers of the kingdom; one who still, fortunately for the country, holds a most distinguished station
in

in his Majesty's council. We hope that the extravagances of new born freemen have not extinguished his former love of liberty; we hope that this great oracle of freedom is not now so disgusted with her sacred name, as to have bartered his former decided sentiments to secure peace at the expence of our national rights. We hope that we shall not find among the abettors of an illegal prerogative, and among the friends to a military government, the man whose energy, whose integrity and whose abilities once suppressed the tyrannical exercise of general warrants.

In short, Sir, the country looks, and I trust it will not look in vain, to the venerable Earl Camden as the man most calculated successfully to advise his Majesty to order his ministers to apply to parliament for a bill of indemnity against the consequences
of

of a measure which they would thereby acknowledge to be illegal, but which they conceive will under the pressure of circumstances be considered as justifiable by the Legislature.

I am, SIR, &c.

LINCOLN'S INN,

February 20, 1794

MVSEVM

BRITANNICVM

FINIS.